September 17, 1979 purported to sell the property for $126,500 to two brothers, Chou Yim Tet and Chew Yim Min, who, however, knew and had notice of the respondents' caveat.

In these circumstances, the respondents commenced proceedings in the High Court on September 26, 1979. As was noted by the learned trial Judge, the respondents had claimed for:–

(i) Specific performance of the contract;

(ii) An injunction whether by themselves or their servants or agents from selling, mortgaging or otherwise dealing with the premises; and

(iii) Further or alternatively, damages for breach of contract.

At the trial, evidence was led to show that the appellants, who alleged that they were in need of money, had subsequently sold the property to the two brothers. The two brothers had moved into occupation and had carried out some renovations. Presumably on the basis of these evidence, former counsel for the appellants, Miss Irene Lim, submitted to the learned trial Judge that by reason of what had happened, specific performance might not be the possible remedy. Counsel for the appellants, Mr. L.A.J. Smith, frankly admitted before us that he saw no reason why specific performance could not have been ordered in all the circumstances of this cases.

In our view, an order for specific performance was the most appropriate remedy. All the equities were in favour of the respondents. To have ordered damages would amount to taking away the proprietary rights of the respondents in favour of the two brothers whose rights must be subordinated to the superior claims of the respondents. The two brothers are not without remedy: they should pursue their claims in their pending suit against the appellants.

Appeal dismissed; Cross-appeal allowed.

Solicitors: *L.A.J. Smith; Mallal & Namazie.*

PARKER DISTRIBUTORS (SINGAPORE) PTE. LTD. v. A/S D/S SVENBORG & D/S af 1912 A/S

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Rajah JJ.) April 28, 1983]

[Singapore – Civil Appeal No. 107 of 1980]

Shipping Law – Carriage of goods – Goods lost or damaged – Breach on stowage – No provision regarding nature of goods in bill of lading – Shipowners entitled to limit liability to US$500 per package – Carriage of Goods by Sea Act (U.S.), s. 4(5).

Bills of Lading – Contract of carriage of goods by sea – Goods of high value not stored in "strong room or locker storage" – Goods lost or damaged – Breach on stowage – No mention of nature of goods in bills of lading – Shipowners entitled to limit liability to US$500 per package under Carriage of Goods by Sea Act (U.S.), s. 4(5).

In the present case 17 packages of Parker writing instruments belonging to the appellants were shipped from San Francisco, U.S.A. to Singapore on the respondents' vessel. It was a term of the contract of carriage that there would be "strong room or locker storage". The goods were not so stowed as the vessel did not have a strong room nor any locker space. 5 packages were lost and 3 were damaged resulting in a loss of $86,086.15 to the appellants. The trial court awarded the appellants $7,274.11 and interest on the basis that the respondents were entitled to limit their liability under the provision for limitation of US$500 per package as set out in section 4(5) of the U.S. Carriage of Goods by Sea Act. The appellants appealed.

Held, dismissing the appeal: (1) the respondents were entitled to rely on the provisions of the said section 4(5). If the appellants had wanted to avoid the limitation provisions, they or the shippers who had endorsed the bill of lading to the appellants should have declared the nature and value of the goods; in which case, the appellants would have had to pay much higher freight;

(2) it was or must have been the intention of the parties to the contract that in these circumstances the respondents could limit their liability to US$500 per package.

Cases referred to:

(1) *Photo Production Ltd.* v. *Securicor Transport Ltd.* [1980] 1 All E.R. 556.

(2) *Suisse Atlantique Societe D'Armement Maritime S.A.* v. *N.V. Rotterdamsche Kolen Centrale* [1966] 2 W.L.R. 944, 988 & 989.

COURT OF APPEAL.

P. Selvadurai for the appellants.

G. Pannirselvam for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): 17 packages of Parker writing in-

struments belonging to the appellants were shipped from San Francisco, U.S.A. to Singapore on the respondents' vessel. It was a term of the contract of carriage that there would be "strong room or locker storage". It was common ground that the goods were not so stowed as the vessel did not have a strong room nor any locker space. It was also admitted that when the goods arrived in Singapore 5 packages were lost and 3 were damaged resulting in a monetary loss of $86,086.15 to the appellants.

At the conclusion of the trial, the learned Judge only awarded the appellants the sum of $7,274.11 and interest thereon on the basis that the respondents were entitled to limit their liability under the provision for limitation of US$500 per package as set out in section 4(5) of the US Carriage of Goods by Sea Act. Against this decision this appeal was brought.

The sole question for our decision is whether in the circumstances the respondents were entitled to invoke the sub-section.

Counsel for the appellants contended before us that in failing to carry the goods in a strong room or a locker, the respondents were in breach of a term which went to the root of the contract and, being in fundamental breach, were disentitled to rely on the limitation provisions of section 4(5) of the Act. Since reference has to be made to the sub-section, we set it out below:–

"RIGHTS AND IMMUNITIES

.....

Valuation of Cargo-Declaration of Excess Value

Section 4.....

(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States or in case of goods not shipped in packages per customary weight unit or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

....."

We are of the view that the respondents were entitled to rely on the provisions of the sub-section. We would give effect to the words "in any event" in the Statute. The question whether the sub-section applied to the breach in this case is a matter of construction of the contract: *Photo Production Ltd.* v. *Securicor Transport Ltd.*[1] The sub-section is clear and unambiguous. If the appellants or their shippers had wanted to avoid the limitation provisions, they or the shippers who had endorsed the bill of lading to the appellants should have declared the nature and value of the goods; in which case, of course, the appellants would have had to pay much higher freight. The risk of loss was apportioned by the parties in the context of the sub-section. In those circumstances, the appropriate insurance coverage could have been arranged by the parties to the carriage.

The appellants in this appeal also seek to equate the effect of the present breach with those of the well-known marine deviation cases which Lord Wilberforce summarised in *Suisse Atlantique*[2] in the following terms:

"... There is a long line of authority the commencement of which is usually taken from the judgment of Tindal C.J. in *Davis* v. *Garrett*, which shows that a shipowner, who deviates from an agreed voyage, steps out of the contract, so that clauses in the contract (such as exceptions or limitation clauses) which are designed to apply to the contracted voyage are held to have no application to the deviating voyage."

We are unable to accept the equation. These cases do not belong to a special category with special rules. As Lord Wilberforce later said of them in *Photo Production Ltd.* at page 563:

"I suggested in the *Suisse Atlantique* that these cases can be regarded as proceeding on principles applicable to the law of contract, viz. that it is a matter of the parties' intentions whether and to what extent clauses in shipping contracts can be applied after a deviation, that is, a departure from the contractually agreed voyage or adventure."

The case before us is merely a breach on stowage. It is a long way away from the deviation cases. The respondents did attempt to perform the contract of carriage. It was or must have been the intention of the parties to the contract that in these circumstances the respondents could limit their liability to US$500 per package.

For these reasons, we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*